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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/206,249	12/07/1998	MIRI SEIBERG	JBP438	5255

7590

04/19/2002

PHILIP S. JOHNSON, ESQ.
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

EXAMINER

MELLER, MICHAEL V

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 04/19/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/206,249

Applicant(s)

SEIBERG ET AL.

Examiner

Michael V. Meller

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 March 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 18 March 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: _____.

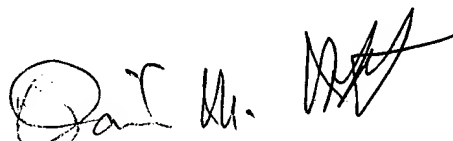
Claim(s) rejected: 2,4,8-22,24,28-36,38,40,44-47,58,70-72 and 74.

Claim(s) withdrawn from consideration: 1, 3, 5-7, 23, 25-27, 37, 39, 41-43, 48-57, 59-69, parts of 72 pertaining to serine protease inhibitors and 73.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: the phrase, "in need thereof" raises new issues since the claims never required that the mammalian cell be in need of increasing phagocytosis or ICAM-1 expression.

Continuation of 5. does NOT place the application in condition for allowance because: it merely shows that some people may choose to heat the soybean milk before use but does not negate the fact that Limtrakul et al. and Kosaka clearly do not. Applicants comments concerning Kosaka are not well taken since Kosaka clearly contemplates treating skin diseases, col. 2, lines 1-10, and never heats the soybean milk, col. 5, lines 14-17, further Kosaka contemplates suppositories which do contact the skin. The comments concerning Limtrakul are also not well taken since clearly applies the soybean milk to mouse skin, page 1592, fourth paragraph, and never heats the milk, page 1592, third paragraph. Patent application Serial Number, 09/110,409 is still a pertinent reference since the application claims administration of the same composition to a mammal. The JP 62036304 patent still would contain soybean milk which would inherently have the soybean trypsin inhibitor whether the composition was heated or not.


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1265/